



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re APPLIED MICRO CIRCUITS  
CORPORATION, INC. DERIVATIVE  
LITIGATION

) LEAD CASE NO. CV 06-04269-JW

)

)

) ~~PROPOSED~~ ORDER AND FINAL  
JUDGMENT

\_\_\_\_\_  
This Document Relates To:

)

)

) DATE: May 5, 2008

) TIME: 9:00 a.m.

) CRTRM: 8, 4th Floor

) JUDGE: Hon. James Ware

ALL ACTIONS.

1 WHEREAS, on May 5, 2008, the Court conducted a hearing on Final Approval of the  
2 Proposed Settlement of the above entitled action. Upon consideration of the parties' arguments,  
including those of the objectors, the Court ORDERS as follows:

3 WHEREAS, the parties to the above-captioned action (the "Action") entered into a  
4 Stipulation of Settlement dated as of January 28, 2008 (the "Stipulation"), and have applied to this  
5 Court for final approval of the settlement provided for therein (the "Settlement") pursuant to Rule  
6 23.1 of the Federal Rules of Civil Procedure ("Rule 23.1");

7 WHEREAS, on February 27, 2008, this Court entered a Corrected Preliminary Approval  
8 Order ("Preliminary Order"), preliminarily approving the Settlement and requiring notice to  
9 stockholders of Applied Micro Circuits Corporation, Inc. ("AMCC" or "the Company"), who held  
10 shares of AMCC common stock on January 28, 2008, by mailing via first-class mail to each  
shareholder of record the Notice and by publishing by news wire the Summary Notice;

11 WHEREAS, the Preliminary Order set a hearing for May 5, 2008, to determine whether:

12 (i) the plaintiffs fairly and adequately represent the interests of the shareholders in  
13 enforcing the right of the Company;

14 (ii) the proposed Settlement should be approved as fair, reasonable and adequate;

15 (iii) final judgment should be entered thereon dismissing the Litigation with prejudice;  
16 and

17 (iv) whether Plaintiffs' Counsel's application for an award of attorneys' fees and  
18 reimbursement of expenses should be granted;

19 WHEREAS, notice has been provided to stockholders of AMCC in compliance with the  
20 Preliminary Order; and

21 WHEREAS, in accordance with the Preliminary Order and the notice described therein, a  
22 hearing was held on May 5, 2008, all interested parties were afforded an opportunity to be heard, and  
23 the Court made certain findings of fact and conclusions of law, as set forth in the transcript of that  
24 hearing;

25 NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED pursuant to Rule  
26 23.1 that:

1           1.       The terms and definitions employed in the Stipulation are incorporated by reference  
2 and adopted herein.

3           2.       This Court has jurisdiction over the subject matter of the Litigation, over all parties to  
4 the Litigation and over those persons and entities that objected to the Settlement.

5           3.       The Settlement of the Litigation is, in all respects, fair, reasonable and adequate, is in  
6 accordance with Rule 23.1 and is in the best interest of AMCC and its shareholders and should be  
7 approved. Accordingly, the Stipulation and Settlement are hereby approved.

8           4.       The notice provided for in the Preliminary Order constitutes the best notice  
9 practicable under the circumstances and is in full compliance with the notice requirements of due  
10 process and Rule 23.1.

11           5.       The Consolidated Amended Shareholder Derivative Complaint filed in the Litigation  
12 is hereby dismissed in its entirety, with prejudice and without costs to any party, other than as set  
13 forth in the Stipulation and this Order and Final Judgment.

14           6.       The Court hereby approves the release provisions of the Stipulation in favor of the  
15 Individual Defendants and others, and directs that, in consideration of the terms and conditions of the  
16 Stipulation, upon the Effective Date, Plaintiffs and any other present stockholders of the Company  
17 (claiming by, through, in the right of, or on behalf of the Company), and the Company (or any  
18 person claiming by, through, in the right of, or on behalf of the Company, by subrogation,  
19 assignment or otherwise) fully, finally and forever release, relinquish and discharge all Released  
20 Claims against the Released Persons and the Related Persons, including the claims that were made  
21 derivatively on behalf of AMCC in *In re Applied Micro Circuits Corporation Shareholder*  
22 *Derivative Litigation*, Case No. 1-06-CV-069540, California Superior Court, County of Santa Clara  
23 (“State Court Action”).

24           7.       The Court hereby approves the release provisions of the Stipulation in favor of  
25 Plaintiffs and others, and directs that, in consideration of the terms and conditions of the Stipulation,  
26 upon the Effective Date, each of the Defendants, the Released Persons and the Related Persons,  
27 fully, finally and forever release, relinquish and discharge Plaintiffs and their counsel from all claims  
28

1 arising out of, or relating to or in connection with, their institution, prosecution, assertion or  
2 resolution of the Litigation or the Released Claims.

3 8. The Court hereby approves the Parties' (i) acknowledgment that after the signing of  
4 the Stipulation they may discover facts in addition to or different from those which they then know  
5 or believe to be true and their agreement that, in such event, the releases set forth above shall  
6 nonetheless remain effective in all respects; and (ii) waiver of any and all provisions, rights and  
7 benefits conferred by any law of any state or territory of the United States, or principle of common  
8 law that is similar, comparable or equivalent to Section 1542 of the California Civil Code.

9 9. AMCC has adopted or will adopt certain additional corporate governance measures  
10 set forth in Exhibit A to the Stipulation, and, with respect to ongoing obligations created by those  
11 changes, AMCC shall keep such obligations in force and substantially similar form, for a period of at  
12 least ten years from the date of the Stipulation, unless a majority of the shareholders of AMCC vote  
13 to amend these obligations. Notwithstanding the foregoing, in no event shall AMCC be obligated to  
14 adopt, implement or enforce any measures that, either now or in the future, conflict with or are  
15 otherwise inconsistent with any NASDAQ National Market listing requirements, the listing  
16 requirements of any exchange on which its stock is traded, any regulations of the Securities and  
17 Exchange Commission or any applicable law.

18 10. Plaintiffs' Counsel are hereby awarded attorneys' fees and expenses in the amount of  
19 \$ 905,000.00, with such payment to be made in accordance with the terms of the Stipulation.

20 11. This Order and Final Judgment, the Stipulation, all exhibits thereto, and any and all  
21 negotiations, papers, writings, statements and/or proceedings related to the Settlement are not, and  
22 shall not in any way be used or construed as (a) an admission, or evidence of, the validity of any  
23 Released Claim or of any wrongdoing or liability of the Individual Defendants; or (b) an admission  
24 of, or evidence of, any fault or omission of any of the Individual Defendants in any civil, criminal or  
25 administrative proceeding in any court, administrative agency or other tribunal, other than in such  
26 proceedings as may be necessary to consummate or enforce the Stipulation, the Settlement or this  
27 Order and Final Judgment, except that the Defendants may file the Stipulation and/or the Order and  
28 Final Judgment in any action that may be brought against them in order to support a defense or

1 counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement,  
2 judgment reduction or any other theory of claim preclusion or issue preclusion or similar defense or  
3 counterclaim, including but not limited to the State Court Action.

4 12. Without affecting the finality of this Order and Final Judgment in any way, this Court  
5 hereby retains jurisdiction with respect to implementation and enforcement of the terms of the  
6 Stipulation, including effectuating the release of claims in related proceedings such as the State  
7 Court Action and all parties hereto submit to the jurisdiction of the Court for the purposes of  
8 implementing and enforcing the Settlement embodied in the Stipulation.

9 13. In the event that the Effective Date does not occur in accordance with the terms of the  
10 Stipulation, including effectuating the release of claims in related proceedings such as the State  
11 Court Action this Order and Final Judgment shall be vacated, and all Orders entered and releases  
12 delivered in connection with the Stipulation and Order and Final Judgment shall be null and void,  
13 except as otherwise provided for in the Stipulation.

14 SO ORDERED. The Clerk shall close this file.

15 DATED: May 8, 2008

  
JAMES WARE  
UNITED STATES DISTRICT COURT JUDGE

16 Submitted by,

17  
18 WOLF HALDENSTEIN ADLER  
19 FREEMAN & HERZ LLP  
20 FRANCIS M. GREGOREK  
21 RACHELE R. RICKERT

22 /s/ Rachele R. Rickert

RACHELE R. RICKERT

23 750 B Street, Suite 2770  
24 San Diego, CA 92101  
25 Telephone: 619/239-4599  
26 Facsimile: 619/234-4599  
27

1 WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
2 LAWRENCE P. KOLKER  
GUSTAVO BRUCKNER  
3 RACHEL S. POPLOCK  
270 Madison Avenue  
4 New York, NY 10016  
Telephone: 212/545-4600  
5 Facsimile: 212/545-4653

6 Lead Counsel for Plaintiffs

7 GAINEY & McKENNA  
THOMAS J. MCKENNA  
8 295 Madison Avenue, 4th Floor  
New York, NY 10017  
9 Telephone: 212/983-1300  
Facsimile: 212/983-0383

10 Attorneys for Plaintiff Francesco Ciabatti

11 LAW OFFICES OF JACOB T. FOGEL, P.C.  
12 JACOB T. FOGEL  
32 Court Street – Suite # 602  
13 Brooklyn, New York 11201

14 Attorneys for Plaintiff Pinchus Berliner

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 AMCC:15631.ORD

27  
28 [PROPOSED] ORDER AND FINAL JUDGMENT -- LEAD CASE NO. CV 06-04269 JW